

1 SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

2 (a) ~~SHORT TITLE.~~—This Act may be cited as the ``Y2K
3 Act".

4 (b) ~~TABLE OF SECTIONS~~—The table of sections for this
5 Act is as follows:

Sec.1. Short title; table of sections.
Sec.2. Findings and purposes.
Sec.3. Definitions.
Sec.4. Application of Act.
Sec.5. Punitive damages limitations.
Sec.6. Proportionate liability.
Sec.7. Prelitigation notice.
Sec.8. Pleading requirements.
Sec.9. Duty to mitigate.
Sec.10. Application of existing impossibility or commercial impracticability doc-
trines.
Sec.11. Damages limitation by contract.
Sec.12. Damages in tort claims.
Sec.13. State of mind; bystander liability; control.
Sec.14. Appointment of special masters or magistrate judges for Y2K actions.
Sec.15. Y2K actions as class actions.
Sec.16. Applicability of State law.
Sec.17. Admissible evidence ultimate issue in State courts.
Sec.18. Suspension of penalties for certain year 2000 failures by small business
concerns.

6 SEC. 2. FINDINGS AND PURPOSES.

7 (a) ~~FINDINGS~~—The Congress finds the following:

8 (1)(A) Many information technology systems, de-
9 vices, and programs are not capable of recognizing
10 certain dates in 1999 and after December 31, 1999,
11 and will read dates in the year 2000 and thereafter
12 as if those dates represent the year 1900 or thereafter
13 or will fail to process dates after December 31, 1999.

14 (B) If not corrected, the problem described in
15 subparagraph (A) and resulting failures could inca-
16 pacitate systems that are essential to the functioning

1 of markets, commerce, consumer products, utilities,
2 Government, and safety and defense systems, in the
3 United States and throughout the world.

4 (2) It is in the national interest that producers
5 and users of technology products concentrate their at-
6 tention and resources in the time remaining before
7 January 1, 2000, on assessing, fixing, testing, and de-
8 veloping contingency plans to address any and all
9 outstanding year 2000 computer date-change prob-
10 lems, so as to minimize possible disruptions associ-
11 ated with computer failures.

12 (3)(A) Because year 2000 computer date-change
13 problems may affect virtually all businesses and other
14 users of technology products to some degree, there is
15 a substantial likelihood that actual or potential year
16 2000 failures will prompt a significant volume of liti-
17 gation, much of it insubstantial.

18 (B) The litigation described in subparagraph (A)
19 would have a range of undesirable effects, including
20 the following:

21 (i) It would threaten to waste technical and
22 financial resources that are better devoted to cur-
23 ing year 2000 computer date-change problems
24 and ensuring that systems remain or become
25 operational.

1 (ii) It could threaten the network of valued
2 and trusted business and customer relationships
3 that are important to the effective functioning of
4 the national economy.

5 (iii) It would strain the Nation's legal sys-
6 tem, causing particular problems for the small
7 businesses and individuals who already find that
8 system inaccessible because of its complexity and
9 expense.

10 (iv) The delays, expense, uncertainties, loss
11 of control, adverse publicity, and animosities
12 that frequently accompany litigation of business
13 disputes could exacerbate the difficulties associ-
14 ated with the date change and work against the
15 successful resolution of those difficulties.

16 (4) It is appropriate for the Congress to enact
17 legislation to assure that the year 2000 problems de-
18 scribed in this section do not unnecessarily disrupt
19 interstate commerce or create unnecessary caseloads
20 in Federal courts and to provide initiatives to help
21 businesses prepare and be in a position to withstand
22 the potentially devastating economic impact of such
23 problems.

24 (5) Resorting to the legal system for resolution of
25 year 2000 problems described in this section is not

1 feasible for many businesses and individuals who al-
2 ready find the legal system inaccessible, particularly
3 small businesses and individuals who already find the
4 legal system inaccessible, because of its complexity
5 and expense.

6 (6) Concern about the potential for liability—in
7 particular, concern about the substantial litigation
8 expense associated with defending against even the
9 most insubstantial lawsuits—is prompting many per-
10 sons and businesses with technical expertise to avoid
11 projects aimed at curing year 2000 computer date-
12 change problems.

13 (7) A proliferation of frivolous lawsuits relating
14 to year 2000 computer date-change problems by op-
15 portunistic parties may further limit access to courts
16 by straining the resources of the legal system and de-
17 priving deserving parties of their legitimate rights to
18 relief.

19 (8) Congress encourages businesses to approach
20 their disputes relating to year 2000 computer date-
21 change problems responsibly, and to avoid unneces-
22 sary, time-consuming, and costly litigation about
23 Y2K failures, particularly those that are not material.
24 Congress supports good faith negotiations between
25 parties when there is such a dispute, and, if nec-

1 essary, urges the parties to enter into voluntary, non-
2 binding mediation rather than litigation.

3 (b) ~~PURPOSES~~—Based upon the power of the Congress
4 under Article I, Section 8, Clause 3 of the Constitution of
5 the United States, the purposes of this Act are—

6 (1) to establish uniform legal standards that give
7 all businesses and users of technology products reason-
8 able incentives to solve year 2000 computer date-
9 change problems before they develop;

10 (2) to encourage continued remediation and test-
11 ing efforts to solve such problems by providers, suppli-
12 ers, customers, and other contracting partners;

13 (3) to encourage private and public parties alike
14 to resolve disputes relating to year 2000 computer
15 date-change problems by alternative dispute mecha-
16 nisms in order to avoid costly and time-consuming
17 litigation, to initiate those mechanisms as early as
18 possible, and to encourage the prompt identification
19 and correction of such problems; and

20 (4) to lessen the burdens on interstate commerce
21 by discouraging insubstantial lawsuits while preserv-
22 ing the ability of individuals and businesses that have
23 suffered real injury to obtain complete relief.

24 SEC. 3. DEFINITIONS.

25 In this Act:

1 (1) Y2K ACTION.—The term “Y2K action”—

2 (A) means a civil action commenced in any
3 Federal or State court, or an agency board of
4 contract appeal proceeding, in which the plain-
5 tiff's alleged harm or injury arises from or is re-
6 lated to an actual or potential Y2K failure, or
7 a claim or defense arises from or is related to an
8 actual or potential Y2K failure;

9 (B) includes a civil action commenced in
10 any Federal or State court by a government en-
11 tity when acting in a commercial or contracting
12 capacity; but

13 (C) does not include an action brought by
14 a government entity acting in a regulatory, su-
15 pervisory, or enforcement capacity.

16 (2) Y2K FAILURE.—The term “Y2K failure”
17 means failure by any device or system (including any
18 computer system and any microchip or integrated
19 circuit embedded in another device or product), or
20 any software, firmware, or other set or collection of
21 processing instructions to process, to calculate, to
22 compare, to sequence, to display, to store, to transmit,
23 or to receive year-2000 date-related data, including
24 failures—

1 (A) to deal with or account for transitions
2 or comparisons from, into, and between the years
3 1999 and 2000 accurately;

4 (B) to recognize or accurately to process
5 any specific date in 1999, 2000, or 2001; or

6 (C) accurately to account for the year
7 2000's status as a leap year, including recogni-
8 tion and processing of the correct date on Feb-
9 ruary 29, 2000.

10 (3) GOVERNMENT ENTITY.—The term ``govern-
11 ment entity" means an agency, instrumentality, or
12 other entity of Federal, State, or local government
13 (including multijurisdictional agencies, instrumental-
14 ities, and entities).

15 (4) MATERIAL DEFECT.—The term ``material de-
16 fect" means a defect in any item, whether tangible or
17 intangible, or in the provision of a service, that sub-
18 stantially prevents the item or service from operating
19 or functioning as designed or according to its speci-
20 fications. The term ``material defect" does not include
21 a defect that—

22 (A) has an insignificant or de minimis ef-
23 fect on the operation or functioning of an item
24 or computer program;

1 (B) affects only a component of an item or
2 program that, as a whole, substantially operates
3 or functions as designed; or

4 (C) has an insignificant or de minimis ef-
5 fect on the efficacy of the service provided.

6 (5) PERSONALINJURY.—The term ``personal in-
7 jury" means physical injury to a natural person,
8 including—

9 (A) death as a result of a physical injury;
10 and

11 (B) mental suffering, emotional distress, or
12 similar injuries suffered by that person in con-
13 nection with a physical injury.

14 (6) STATE.—The term ``State" means any State
15 of the United States, the District of Columbia, the
16 Commonwealth of Puerto Rico, the Northern Mariana
17 Islands, the United States Virgin Islands, Guam,
18 American Samoa, and any other territory or posses-
19 sion of the United States, and any political subdivi-
20 sion thereof.

21 (7) CONTRACT.—The term ``contract" means a
22 contract, tariff, license, or warranty.

23 (8) ALTERNATIVE DISPUTE RESOLUTION.—The
24 term ``alternative dispute resolution" means any
25 process or proceeding, other than adjudication by a

1 court or in an administrative proceeding, to assist in
2 the resolution of issues in controversy, through proc-
3 esses such as early neutral evaluation, mediation,
4 minitrial, and arbitration.

5 SEC. 4. APPLICATION OF ACT.

6 (a) ~~GENERAL RULE.~~—This Act applies to any Y2K
7 action brought after January 1, 1999, for a Y2K failure
8 occurring before January 1, 2003, or for a potential Y2K
9 failure that could occur or has allegedly caused harm or
10 injury before January 1, 2003, including any appeal, re-
11 mand, stay, or other judicial, administrative, or alternative
12 dispute resolution proceeding in such an action.

13 (b) ~~NO NEW CAUSE OF ACTION CREATED.~~—Nothing
14 in this Act creates a new cause of action, and, except as
15 otherwise explicitly provided in this Act, nothing in this
16 Act expands any liability otherwise imposed or limits any
17 defense otherwise available under Federal or State law.

18 (c) ~~CLAIMS FOR PERSONAL INJURY OR WRONGFUL~~
19 ~~DEATH EXCLUDED.~~—This Act does not apply to a claim
20 for personal injury or for wrongful death.

21 (d) ~~WARRANTY AND CONTRACT PRESERVATION.~~

22 (1) ~~IN GENERAL.~~—Subject to paragraph (2), in
23 any Y2K action any written contractual term, in-
24 cluding a limitation or an exclusion of liability, or
25 a disclaimer of warranty, shall be strictly enforced

1 unless the enforcement of that term would manifestly
2 and directly contravene applicable State law em-
3 bodied in any statute in effect on January 1, 1999,
4 specifically addressing that term.

5 (2) ~~INTERPRETATION OF CONTRACT~~—In any
6 Y2K action in which a contract to which paragraph
7 (1) applies is silent as to a particular issue, the inter-
8 pretation of the contract as to that issue shall be de-
9 termined by applicable law in effect at the time the
10 contract was executed.

11 (3) ~~UNCONSCIONABILITY~~—Nothing in paragraph
12 (1) shall prevent enforcement of State law doctrines
13 of unconscionability, including adhesion, recognized
14 as of January 1, 1999, in controlling judicial prece-
15 dent by the courts of the State whose law applies to
16 the Y2K action.

17 (e) ~~PREEMPTION OF STATE LAW~~—This Act supersedes
18 State law to the extent that it establishes a rule of law ap-
19 plicable to a Y2K action that is inconsistent with State law,
20 but nothing in this Act implicates, alters, or diminishes the
21 ability of a State to defend itself against any claim on the
22 basis of sovereign immunity.

23 (f) ~~APPLICATION WITH YEAR 2000 INFORMATION AND~~
24 ~~READINESS DISCLOSURE ACT~~—Nothing in this Act super-

1 sedes any provision of the Year 2000 Information and
2 Readiness Disclosure Act.

3 (g) APPLICATION TO ACTIONS BROUGHT BY A GOVERN-
4 MENT ENTITY.—

5 (1) IN GENERAL.—To the extent provided in this
6 subsection, this Act shall apply to an action brought
7 by a government entity described in section 3(1)(C).

8 (2) DEFINITIONS.—In this subsection:

9 (A) DEFENDANT.—

10 (i) IN GENERAL.—The term “defend-
11 ant” includes a State or local government.

12 (ii) STATE.—The term “State” means
13 each of the several States of the United
14 States, the District of Columbia, the Com-
15 monwealth of Puerto Rico, the Virgin Is-
16 lands, Guam, American Samoa, and the
17 Commonwealth of the Northern Mariana Is-
18 lands.

19 (iii) LOCAL GOVERNMENT.—The term
20 “local government” means—

21 (I) any county, city, town, town-
22 ship, parish, village, or other general
23 purpose political subdivision of a
24 State; and

1 (II) any combination of political
2 subdivisions described in subclause (I)
3 recognized by the Secretary of Housing
4 and Urban Development.

5 (B) Y2KUPSET.—The term “Y2K upset”—

6 (i) means an exceptional temporary
7 noncompliance with applicable Federally
8 enforceable measurement, monitoring, or re-
9 porting requirements directly related to a
10 Y2K failure that are beyond the reasonable
11 control of the defendant charged with com-
12 pliance; and

13 (ii) does not include—

14 (I) noncompliance with applicable
15 Federally enforceable measurement,
16 monitoring, or reporting requirements
17 that constitutes or would create an im-
18 minent threat to public health, safety,
19 or the environment;

20 (II) noncompliance with applica-
21 ble Federally enforceable measurement,
22 monitoring, or reporting requirements
23 that provide for the safety and sound-
24 ness of the banking or monetary sys-
25 tem, or for the integrity of the national

1 securities markets, including the pro-
2 tection of depositors and investors;
3 (III) noncompliance with applica-
4 ble Federally enforceable measurement,
5 monitoring, or reporting requirements
6 to the extent caused by operational
7 error or negligence;
8 (IV) lack of reasonable preventa-
9 tive maintenance;
10 (V) lack of preparedness for a
11 Y2K failure; or
12 (VI) noncompliance with the un-
13 derlying Federally enforceable require-
14 ments to which the applicable Feder-
15 ally enforceable measurement, monitor-
16 ing, or reporting requirement relates.

17 (3) CONDITIONS NECESSARY FOR A DEMONSTRATION OF A Y2K UPSET.—A defendant who wishes to
18 establish the affirmative defense of Y2K upset shall
19 demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that—
20
21 (A) the defendant previously made a reason-
22 able good faith effort to anticipate, prevent, and
23 effectively remediate a potential Y2K failure;
24

1 (B) a Y2K upset occurred as a result of a
2 Y2K failure or other emergency directly related
3 to a Y2K failure;

4 (C) noncompliance with the applicable Fed-
5 erally enforceable measurement, monitoring, or
6 reporting requirement was unavoidable in the
7 face of an emergency directly related to a Y2K
8 failure and was necessary to prevent the disrup-
9 tion of critical functions or services that could
10 result in harm to life or property;

11 (D) upon identification of noncompliance
12 the defendant invoking the defense began imme-
13 diate actions to correct any violation of Feder-
14 ally enforceable measurement, monitoring, or re-
15 porting requirements; and

16 (E) the defendant submitted notice to the
17 appropriate Federal regulatory authority of a
18 Y2K upset within 72 hours from the time that
19 the defendant became aware of the upset.

20 (4) GRANT OF A Y2K UPSET DEFENSE—Subject
21 to the other provisions of this subsection, the Y2K
22 upset defense shall be a complete defense to the impo-
23 sition of a penalty in any action brought as a result
24 of noncompliance with Federally enforceable measure-
25 ment, monitoring, or reporting requirements for any

1 defendant who establishes by a preponderance of the
2 evidence that the conditions set forth in paragraph
3 (3) are met.

4 (5) LENGTH OF Y2K UPSET.—The maximum al-
5 lowable length of the Y2K upset shall be not more
6 than 15 days beginning on the date of the upset un-
7 less specific relief by the appropriate regulatory au-
8 thority is granted.

9 (6) FRAUDULENT INVOCATION OF Y2K UPSET DE-
10 FENSE.—Fraudulent use of the Y2K upset defense
11 provided for in this subsection shall be subject to the
12 sanctions provided in section 1001 of title 18, United
13 States Code.

14 (7) EXPIRATION OF DEFENSE.—The Y2K upset
15 defense may not be asserted for a Y2K upset occurring
16 after June 30, 2000.

17 (8) PRESERVATION OF AUTHORITY.—Nothing in
18 this subsection shall affect the authority of a govern-
19 ment entity to seek injunctive relief or require a de-
20 fendant to correct a violation of a Federal enforceable
21 measurement, monitoring, or reporting requirement.

22 (h) CONSUMER PROTECTION FROM Y2K FAILURES.—

23 (1) IN GENERAL.—No person who transacts busi-
24 ness on matters directly or indirectly affecting resi-
25 dential mortgages shall cause or permit a foreclosure

1 on any such mortgage against a consumer as a result
2 of an actual Y2K failure that results in an inability
3 accurately or timely to process any mortgage pay-
4 ment transaction.

5 (2) NOTICE.—A consumer who is affected by an
6 inability described in paragraph (1) shall notify the
7 servicer for the mortgage, in writing and within 7
8 business days from the time that the consumer be-
9 comes aware of the Y2K failure and the consumer's
10 inability accurately or timely to fulfill his or her obli-
11 gation to pay, of such failure and inability and shall
12 provide to the servicer any available documentation
13 with respect to the failure.

14 (3) ACTIONS MAY RESUME AFTER GRACE PE-
15 RIOD.—Notwithstanding paragraph (1), an action
16 prohibited under paragraph (1) may be resumed, if
17 the consumer's mortgage obligation has not been paid
18 and the servicer of the mortgage has not expressly and
19 in writing granted the consumer an extension of time
20 during which to pay the consumer's mortgage obliga-
21 tion, but only after the later of—

22 (A) 4 weeks after January 1, 2000; or

23 (B) 4 weeks after notification is made as re-
24 quired under paragraph (2), except that any no-

1 tification made on or after March 15, 2000, shall
2 not be effective for purposes of this subsection.

3 (4) A PPLICABILITY.—This subsection does not
4 apply to transactions upon which a default has oc-
5 curred before December 15, 1999, or with respect to
6 which an imminent default was foreseeable before De-
7 cember 15, 1999.

8 (5) E NFORCEMENT OF OBLIGATIONS MERELY
9 TOLLED—This subsection delays but does not prevent
10 the enforcement of financial obligations, and does not
11 otherwise affect or extinguish the obligation to pay.

12 (6) DEFINITION.—In this subsection—

13 (A) The term ``consumer" means a natural
14 person.

15 (B) The term ``residential mortgage" has
16 the meaning given the term ``federally related
17 mortgage loan" under section 3 of the Real Es-
18 tate Settlement Procedures Act of 1974 (12
19 U.S.C. 2602).

20 (C) The term ``servicer" means the person,
21 including any successor, responsible for receiving
22 any scheduled periodic payments from a con-
23 sumer pursuant to the terms of a residential
24 mortgage, including amounts for any escrow ac-
25 count, and for making the payments of principal

1 and interest and such other payments with re-
2 spect to the amounts received from the borrower
3 as may be required pursuant to the terms of the
4 mortgage. Such term includes the person, includ-
5 ing any successor, who makes or holds a loan if
6 such person also services the loan.

7 (i) ~~A PPLICABILITY TO SECURITIES LITIGATION~~—In
8 any Y2K action in which the underlying claim arises under
9 the securities laws (as defined in section 3(a) of the Securi-
10 ties Exchange Act of 1934 (15 U.S.C. 78c(a)), the provisions
11 of this Act, other than section 13(b) of this Act, shall not
12 apply.

13 SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

14 (a) ~~IN GENERAL~~—In any Y2K action in which puni-
15 tive damages are permitted by applicable law, the defendant
16 shall not be liable for punitive damages unless the plaintiff
17 proves by clear and convincing evidence that the applicable
18 standard for awarding damages has been met.

19 (b) ~~APSON PUNITIVE DAMAGES~~—

20 (1) ~~I N GENERAL~~—Subject to the evidentiary
21 standard established by subsection (a), punitive dam-
22 ages permitted under applicable law against a defend-
23 ant described in paragraph (2) in a Y2K action may
24 not exceed the lesser of—

1 (A) 3 times the amount awarded for com-
2 pensatory damages; or
3 (B) \$250,000.

4 (2) DEFENDANT DESCRIBED—A defendant de-
5 scribed in this paragraph is a defendant—

6 (A) who—

7 (i) is sued in his or her capacity as an
8 individual; and

9 (ii) whose net worth does not exceed
10 \$500,000; or

11 (B) that is an unincorporated business, a
12 partnership, corporation, association, or organi-
13 zation, with fewer than 50 full-time employees.

14 (3) NO CAP IF INJURY SPECIFICALLY IN-
15 TENDED—Paragraph (1) does not apply if the plain-
16 tiff establishes by clear and convincing evidence that
17 the defendant acted with specific intent to injure the
18 plaintiff.

19 (c) GOVERNMENT ENTITIES.—Punitive damages in a
20 Y2K action may not be awarded against a government en-
21 tity.

22 SEC. 6. PROPORTIONATE LIABILITY.

23 (a) IN GENERAL—Except in a Y2K action that is a
24 contract action, and except as provided in subsections (b)
25 through (g), a person against whom a final judgment is

1 entered in a Y2K action shall be liable solely for the portion
2 of the judgment that corresponds to the relative and propor-
3 tionate responsibility of that person. In determining the
4 percentage of responsibility of any defendant, the trier of
5 fact shall determine that percentage as a percentage of the
6 total fault of all persons, including the plaintiff, who caused
7 or contributed to the total loss incurred by the plaintiff.

8 (b) ~~PROPORTIONATE LIABILITY~~.—

9 (1) ~~DETERMINATION OF RESPONSIBILITY~~.—In
10 any Y2K action that is not a contract action, the
11 court shall instruct the jury to answer special inter-
12 rogatories, or, if there is no jury, the court shall make
13 findings with respect to each defendant, including de-
14 fendants who have entered into settlements with the
15 plaintiff or plaintiffs, concerning—

16 (A) the percentage of responsibility, if any,
17 of each defendant, measured as a percentage of
18 the total fault of all persons who caused or con-
19 tributed to the loss incurred by the plaintiff; and

20 (B) if alleged by the plaintiff, whether the
21 defendant (other than a defendant who has en-
22 tered into a settlement agreement with the plain-
23 tiff)—

24 (i) acted with specific intent to injure
25 the plaintiff; or

1 (ii) knowingly committed fraud.

2 (2) ~~C~~ONTENTS OF SPECIAL INTERROGATORIES ~~OR~~

3 FINDINGS—The responses to interrogatories or find-
4 ings under paragraph (1) shall specify the total
5 amount of damages that the plaintiff is entitled to re-
6 cover and the percentage of responsibility of each de-
7 fendant found to have caused or contributed to the
8 loss incurred by the plaintiff.

9 (3) ~~F~~ACTORS FOR CONSIDERATION—In deter-
10 mining the percentage of responsibility under this
11 subsection, the trier of fact shall consider—

12 (A) the nature of the conduct of each person
13 found to have caused or contributed to the loss
14 incurred by the plaintiff; and

15 (B) the nature and extent of the causal rela-
16 tionship between the conduct of each such person
17 and the damages incurred by the plaintiff.

18 (c) ~~J~~OINT LIABILITY FOR ~~S~~PECIFIC INTENT OR
19 ~~F~~RAUD—

20 (1) ~~I~~N GENERAL—Notwithstanding subsection
21 (a), the liability of a defendant in a Y2K action that
22 is not a contract action is joint and several if the
23 trier of fact specifically determines that the
24 defendant—

1 (A) acted with specific intent to injure the
2 plaintiff; or

3 (B) knowingly committed fraud.

4 (2) FRAUD, RECKLESSNESS-

5 (A) KNOWING COMMISSION OF FRAUD DE-

6 SCRIBED-For purposes of subsection

7 (b)(1)(B)(ii) and paragraph (1)(B) of this sub-

8 section, a defendant knowingly committed fraud

9 if the defendant-

10 (i) made an untrue statement of a ma-
11 terial fact, with actual knowledge that the
12 statement was false;

13 (ii) omitted a fact necessary to make
14 the statement not be misleading, with actual
15 knowledge that, as a result of the omission,
16 the statement was false; and

17 (iii) knew that the plaintiff was rea-
18 sonably likely to rely on the false statement.

19 (B) RECKLESSNESS-For purposes of sub-
20 section (b)(1)(B) and paragraph (1) of this sub-
21 section, reckless conduct by the defendant does
22 not constitute either a specific intent to injure,
23 or the knowing commission of fraud, by the de-
24 fendant.

1 (3) RIGHT TO CONTRIBUTIONNOT AFFECTED—

2 Nothing in this section affects the right, under any
3 other law, of a defendant to contribution with respect
4 to another defendant found under subsection
5 (b)(1)(B), or determined under paragraph (1)(B) of
6 this subsection, to have acted with specific intent to
7 injure the plaintiff or to have knowingly committed
8 fraud.

9 (d) ~~S~~PECIAL RULES.—

10 (1) UNCOLLECTIBLESHARE—

11 (A) I N GENERAL—Notwithstanding sub-
12 section (a), if, upon motion made not later than
13 6 months after a final judgment is entered in
14 any Y2K action that is not a contract action, the
15 court determines that all or part of the share of
16 the judgment against a defendant for compen-
17 satory damages is not collectible against that de-
18 fendant, then each other defendant in the action
19 is liable for the uncollectible share as follows:

20 (i) PERCENTAGEOF NET WORTH—The
21 other defendants are jointly and severally
22 liable for the uncollectible share if the plain-
23 tiff establishes that—

24 (I) the plaintiff is an individual
25 whose recoverable damages under the

1 final judgment are equal to more than
2 10 percent of the net worth of the
3 plaintiff; and

4 (II) the net worth of the plaintiff
5 is less than \$200,000.

6 (ii) OTHER PLAINTIFFS.—For a plain-
7 tiff not described in clause (i), each of the
8 other defendants is liable for the
9 uncollectible share in proportion to the per-
10 centage of responsibility of that defendant.

11 (iii) For a plaintiff not described in
12 clause (i), in addition to the share identi-
13 fied in clause (ii), the defendant is liable for
14 an additional portion of the uncollectible
15 share in an amount equal to 50 percent of
16 the amount determined under clause (ii) if
17 the plaintiff demonstrates by a preponder-
18 ance of the evidence that the defendant acted
19 with reckless disregard for the likelihood
20 that its acts would cause injury of the sort
21 suffered by the plaintiff.

22 (B) OVERALL LIMIT.—The total payments
23 required under subparagraph (A) from all de-
24 fendants may not exceed the amount of the
25 uncollectible share.

1 (C) ~~SUBJECT TO CONTRIBUTION~~—A defend-
2 ant against whom judgment is not collectible is
3 subject to contribution and to any continuing li-
4 ability to the plaintiff on the judgment.

5 (D) ~~SUITS BY CONSUMERS~~—

6 (i) Notwithstanding subparagraph (A),
7 the other defendants are jointly and sever-
8 ally liable for the uncollectible share if—

9 (I) the plaintiff is a consumer
10 whose suit alleges or arises out of a de-
11 fect in a consumer product; and

12 (II) the plaintiff is suing as an
13 individual and not as part of a class
14 action.

15 (ii) In this subparagraph:

16 (I) The term ``class action"
17 means—

18 (aa) a single lawsuit in
19 which (1) damages are sought on
20 behalf of more than 10 persons or
21 prospective class members; or (2)
22 1 or more named parties seek to
23 recover damages on a representa-
24 tive basis on behalf of themselves

1 and other unnamed parties simi-
2 larly situated; or

3 (bb) any group of lawsuits
4 filed in or pending in the same
5 court in which (1) damages are
6 sought on behalf of more than 10
7 persons; and (2) the lawsuits are
8 joined, consolidated, or otherwise
9 proceed as a single action for any
10 purpose.

11 (II) The term ``consumer" means
12 an individual who acquires a con-
13 sumer product for purposes other than
14 resale.

15 (III) The term ``consumer prod-
16 uct" means any personal property or
17 service which is normally used for per-
18 sonal, family, or household purposes.

19 (2) ~~SPECIAL RIGHT OF CONTRIBUTION~~—To the
20 extent that a defendant is required to make an addi-
21 tional payment under paragraph (1), that defendant
22 may recover contribution—

23 (A) from the defendant originally liable to
24 make the payment;

1 (B) from any other defendant that is jointly
2 and severally liable;

3 (C) from any other defendant held propor-
4 tionately liable who is liable to make the same
5 payment and has paid less than that other de-
6 fendant's proportionate share of that payment;
7 or

8 (D) from any other person responsible for
9 the conduct giving rise to the payment that
10 would have been liable to make the same pay-
11 ment.

12 (3) NONDISCLOSURE TO JURY.—The standard
13 for allocation of damages under subsection (a) and
14 subsection (b)(1), and the procedure for reallocation of
15 uncollectible shares under paragraph (1) of this sub-
16 section, shall not be disclosed to members of the jury.

17 (e) ~~SETTLEMENT DISCHARGE~~—

18 (1) ~~IN GENERAL~~—A defendant who settles a
19 Y2K action that is not a contract action at any time
20 before final verdict or judgment shall be discharged
21 from all claims for contribution brought by other per-
22 sons. Upon entry of the settlement by the court, the
23 court shall enter an order constituting the final dis-
24 charge of all obligations to the plaintiff of the settling
25 defendant arising out of the action. The order shall

1 bar all future claims for contribution arising out of
2 the action—

3 (A) by any person against the settling de-
4 fendant; and

5 (B) by the settling defendant against any
6 person other than a person whose liability has
7 been extinguished by the settlement of the settling
8 defendant.

9 (2) REDUCTION—If a defendant enters into a
10 settlement with the plaintiff before the final verdict or
11 judgment, the verdict or judgment shall be reduced by
12 the greater of—

13 (A) an amount that corresponds to the per-
14 centage of responsibility of that defendant; or

15 (B) the amount paid to the plaintiff by that
16 defendant.

17 (f) ~~GENERAL RIGHT OF CONTRIBUTION—~~

18 (1) ~~IN GENERAL—~~A defendant who is jointly
19 and severally liable for damages in any Y2K action
20 that is not a contract action may recover contribution
21 from any other person who, if joined in the original
22 action, would have been liable for the same damages.
23 A claim for contribution shall be determined based on
24 the percentage of responsibility of the claimant and of

1 each person against whom a claim for contribution is
2 made.

3 (2) STATUTE OF LIMITATIONS FOR CONTRIBU
4 TION.—An action for contribution in connection with
5 a Y2K action that is not a contract action shall be
6 brought not later than 6 months after the entry of a
7 final, nonappealable judgment in the Y2K action, ex-
8 cept that an action for contribution brought by a de-
9 fendant who was required to make an additional pay-
10 ment under subsection (d)(1) may be brought not
11 later than 6 months after the date on which such pay-
12 ment was made.

13 (g) MORE PROTECTIVE STATE LAW NOT PRE-
14 EMPTED—Nothing in this section preempts or supersedes
15 any provision of State law that—

16 (1) limits the liability of a defendant in a Y2K
17 action to a lesser amount than the amount deter-
18 mined under this section; or

19 (2) otherwise affords a greater degree of protec-
20 tion from joint or several liability than is afforded by
21 this section.

22 SEC. 7. PRELITIGATION NOTICE.

23 (a) IN GENERAL—Before commencing a Y2K action,
24 except an action that seeks only injunctive relief, a prospec-
25 tive plaintiff in a Y2K action shall send a written notice

1 by certified mail (with either return receipt requested or
2 other means of verification that the notice was sent) to each
3 prospective defendant in that action. The notice shall pro-
4 vide specific and detailed information about—

5 (1) the manifestations of any material defect al-
6 leged to have caused harm or loss;

7 (2) the harm or loss allegedly suffered by the pro-
8 spective plaintiff;

9 (3) how the prospective plaintiff would like the
10 prospective defendant to remedy the problem;

11 (4) the basis upon which the prospective plaintiff
12 seeks that remedy; and

13 (5) the name, title, address, and telephone num-
14 ber of any individual who has authority to negotiate
15 a resolution of the dispute on behalf of the prospective
16 plaintiff.

17 (b) ~~PERSON TO WHOM NOTICE TO BE SENT.~~—The no-
18 tice required by subsection (a) shall be sent—

19 (1) to the registered agent of the prospective de-
20 fendant for service of legal process;

21 (2) if the prospective defendant does not have a
22 registered agent, then to the chief executive officer if
23 the prospective defendant is a corporation, to the
24 managing partner if the prospective defendant is a
25 partnership, to the proprietor if the prospective de-

1 defendant is a sole proprietorship, or to a similarly-sit-
2 uated person if the prospective defendant is any other
3 enterprise; or

4 (3) if the prospective defendant has designated a
5 person to receive prelitigation notices on a Year 2000
6 Internet Website (as defined in section 3(7) of the
7 Year 2000 Information and Readiness Disclosure
8 Act), to the designated person, if the prospective
9 plaintiff has reasonable access to the Internet.

10 (c) ~~RESPONSE TO NOTICE~~—

11 (1) ~~IN GENERAL~~—Within 30 days after receipt
12 of the notice specified in subsection (a), each prospec-
13 tive defendant shall send by certified mail with return
14 receipt requested to each prospective plaintiff a writ-
15 ten statement acknowledging receipt of the notice, and
16 describing the actions it has taken or will take to ad-
17 dress the problem identified by the prospective plain-
18 tiff.

19 (2) ~~WILLINGNESS TO ENGAGE IN ADR~~—The
20 written statement shall state whether the prospective
21 defendant is willing to engage in alternative dispute
22 resolution.

23 (3) ~~INADMISSIBILITY~~—A written statement re-
24 quired by this subsection is not admissible in evi-
25 dence, under Rule 408 of the Federal Rules of Evi-

1 dence or any analogous rule of evidence in any State,
2 in any proceeding to prove liability for, or the inva-
3 lidity of, a claim or its amount, or otherwise as evi-
4 dence of conduct or statements made in compromise
5 negotiations.

6 (4) PRESUMPTIVE TIME OF RECEIPT.—For pur-
7 poses of paragraph (1), a notice under subsection (a)
8 is presumed to be received 7 days after it was sent.

9 (5) PRIORITY.—A prospective defendant receiv-
10 ing more than 1 notice under this section may give
11 priority to notices with respect to a product or service
12 that involves a health or safety related Y2K failure.

13 (d) FAILURE TO RESPOND.—If a prospective
14 defendant—

15 (1) fails to respond to a notice provided pursu-
16 ant to subsection (a) within the 30 days specified in
17 subsection (c)(1), or

18 (2) does not describe the action, if any, the pro-
19 spective defendant has taken, or will take, to address
20 the problem identified by the prospective plaintiff,
21 the prospective plaintiff may immediately commence a legal
22 action against that prospective defendant.

23 (e) REMEDIATION PERIOD.—

24 (1) IN GENERAL.—If the prospective defendant
25 responds and proposes remedial action it will take, or

1 offers to engage in alternative dispute resolution, then
2 the prospective plaintiff shall allow the prospective
3 defendant an additional 60 days from the end of the
4 30-day notice period to complete the proposed reme-
5 dial action or alternative dispute resolution before
6 commencing a legal action against that prospective
7 defendant.

8 (2) ~~EXTENSION BY AGREEMENT~~—The prospec-
9 tive plaintiff and prospective defendant may change
10 the length of the 60-day remediation period by writ-
11 ten agreement.

12 (3) ~~MULTIPLE EXTENSIONS NOT ALLOWED~~—Ex-
13 cept as provided in paragraph (2), a defendant in a
14 Y2K action is entitled to no more than one 30-day
15 period and one 60-day remediation period under
16 paragraph (1).

17 (4) ~~STATUTES OF LIMITATION, ETC., TOLLED~~—
18 Any applicable statute of limitations or doctrine of
19 laches in a Y2K action to which paragraph (1) ap-
20 plies shall be tolled during the notice and remediation
21 period under that paragraph.

22 (f) ~~FAILURE TO PROVIDE NOTICE~~—If a defendant de-
23 termines that a plaintiff has filed a Y2K action without
24 providing the notice specified in subsection (a) or without
25 awaiting the expiration of the appropriate waiting period

1 specified in subsection (c), the defendant may treat the
2 plaintiff's complaint as such a notice by so informing the
3 court and the plaintiff in its initial response to the plain-
4 tiff. If any defendant elects to treat the complaint as such
5 a notice—

6 (1) the court shall stay all discovery and all
7 other proceedings in the action for the appropriate
8 period after filing of the complaint; and

9 (2) the time for filing answers and all other
10 pleadings shall be tolled during the appropriate pe-
11 riod.

12 (g) EFFECT OF CONTRACTUAL OR STATUTORY WAIT-
13 ING PERIODS—In cases in which a contract, or a statute
14 enacted before January 1, 1999, requires notice of non-
15 performance and provides for a period of delay prior to the
16 initiation of suit for breach or repudiation of contract, the
17 period of delay provided by contract or the statute is con-
18 trolling over the waiting period specified in subsections (c)
19 and (d).

20 (h) STATE LAW CONTROLS ALTERNATIVE METH-
21 ODS—Nothing in this section supersedes or otherwise pre-
22 empts any State law or rule of civil procedure with respect
23 to the use of alternative dispute resolution for Y2K actions.

24 (i) PROVISIONAL REMEDIES UNAFFECTED—Nothing
25 in this section interferes with the right of a litigant to pro-

1 visional remedies otherwise available under Rule 65 of the
2 Federal Rules of Civil Procedure or any State rule of civil
3 procedure providing extraordinary or provisional remedies
4 in any civil action in which the underlying complaint seeks
5 both injunctive and monetary relief.

6 (j) ~~SPECIAL RULE FOR CLASS ACTIONS~~—For the pur-
7 pose of applying this section to a Y2K action that is main-
8 tained as a class action in Federal or State court, the re-
9 quirements of the preceding subsections of this section apply
10 only to named plaintiffs in the class action.

11 SEC. 8. PLEADING REQUIREMENTS.

12 (a) ~~APPLICATION WITH RULES OF CIVIL PROCEDURE~~—This section applies exclusively to Y2K actions
13 and, except to the extent that this section requires addi-
14 tional information to be contained in or attached to plead-
15 ings, nothing in this section is intended to amend or other-
16 wise supersede applicable rules of Federal or State civil pro-
17 cedure.

18 (b) ~~NATURE AND AMOUNT OF DAMAGES~~—In all Y2K
19 actions in which damages are requested, there shall be filed
20 with the complaint a statement of specific information as
21 to the nature and amount of each element of damages and
22 the factual basis for the damages calculation.

23 (c) ~~MATERIAL DEFECTS~~—In any Y2K action in
24 which the plaintiff alleges that there is a material defect
25

1 in a product or service, there shall be filed with the com-
2 plaint a statement of specific information regarding the
3 manifestations of the material defects and the facts support-
4 ing a conclusion that the defects are material.

5 (d) ~~REQUIRED STATE OF MIND.~~—In any Y2K action
6 in which a claim is asserted on which the plaintiff may
7 prevail only on proof that the defendant acted with a par-
8 ticular state of mind, there shall be filed with the complaint,
9 with respect to each element of that claim, a statement of
10 the facts giving rise to a strong inference that the defendant
11 acted with the required state of mind.

12 SEC. 9. DUTY TO MITIGATE.

13 (a) ~~IN GENERAL~~—Damages awarded in any Y2K ac-
14 tion shall exclude compensation for damages the plaintiff
15 could reasonably have avoided in light of any disclosure or
16 other information of which the plaintiff was, or reasonably
17 should have been, aware, including information made avail-
18 able by the defendant to purchasers or users of the defend-
19 ant's product or services concerning means of remedying
20 or avoiding the Y2K failure involved in the action.

21 (b) ~~PRESERVATION OF EXISTING LAW~~—The duty im-
22 posed by this section is in addition to any duty to mitigate
23 imposed by State law.

24 (c) ~~EXCEPTION FOR INTENTIONAL FRAUD~~—Sub-
25 section (a) does not apply to damages suffered by reason

1 of the plaintiff's justifiable reliance upon an affirmative
2 material misrepresentation by the defendant, made by the
3 defendant with actual knowledge of its falsity, concerning
4 the potential for Y2K failure of the device or system used
5 or sold by the defendant that experienced the Y2K failure
6 alleged to have caused the plaintiff's harm.

7 SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR
8 COMMERCIAL IMPRACTICABILITY DOCTRINES.
9

10 In any Y2K action for breach or repudiation of con-
11 tract, the applicability of the doctrines of impossibility and
12 commercial impracticability shall be determined by the law
13 in existence on January 1, 1999. Nothing in this Act shall
14 be construed as limiting or impairing a party's right to
15 assert defenses based upon such doctrines.

16 SEC. 11. DAMAGES LIMITATION BY CONTRACT.

17 In any Y2K action for breach or repudiation of con-
18 tract, no party may claim, or be awarded, any category
19 of damages unless such damages are allowed—

- 20 (1) by the express terms of the contract; or
21 (2) if the contract is silent on such damages, by
22 operation of State law at the time the contract was
23 effective or by operation of Federal law.

1 SEC. 12. DAMAGES IN TORT CLAIMS.

2 (a) IN GENERAL—A party to a Y2K action making
3 a tort claim, other than a claim of intentional tort arising
4 independent of a contract, may not recover damages for eco-
5 nomic loss unless—

6 (1) the recovery of such losses is provided for in
7 a contract to which the party seeking to recover such
8 losses is a party, or

9 (2) such losses result directly from damage to
10 tangible personal or real property caused by the Y2K
11 failure involved in the action (other than damage to
12 property that is the subject of the contract between the
13 parties to the Y2K action or, in the event there is no
14 contract between the parties, other than damage
15 caused only to the property that experienced the Y2K
16 failure),

17 and such damages are permitted under applicable Federal
18 or State law.

19 (b) ECONOMIC LOSS—For purposes of this section
20 only, and except as otherwise specifically provided in a
21 valid and enforceable written contract between the plaintiff
22 and the defendant in a Y2K action, the term ``economic
23 loss" means amounts awarded to compensate an injured
24 party for any loss, and includes amounts awarded for dam-
25 ages such as—

26 (1) lost profits or sales;

1 (2) business interruption;
2 (3) losses indirectly suffered as a result of the de-
3 fendant's wrongful act or omission;
4 (4) losses that arise because of the claims of third
5 parties;
6 (5) losses that must be pled as special damages;
7 and
8 (6) consequential damages (as defined in the
9 Uniform Commercial Code or analogous State com-
10 mercial law).

11 (c) CERTAIN OTHER ACTIONS—A person liable for
12 damages, whether by settlement or judgment, in a civil ac-
13 tion to which this Act does not apply because of section 4(c)
14 whose liability, in whole or in part, is the result of a Y2K
15 failure may, notwithstanding any other provision of this
16 Act, pursue any remedy otherwise available under Federal
17 or State law against the person responsible for that Y2K
18 failure to the extent of recovering the amount of those dam-
19 ages.

20 SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

21 (a) DEFENDANTS STATE OF MIND.—In a Y2K action
22 other than a claim for breach or repudiation of contract,
23 and in which the defendant's actual or constructive aware-
24 ness of an actual or potential Y2K failure is an element
25 of the claim, the defendant is not liable unless the plaintiff

1 establishes that element of the claim by the standard of evi-
2 dence under applicable State law in effect on the day before
3 before January 1, 1999.

4 (b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K
5 FAILURES.—

6 (1) IN GENERAL—With respect to any Y2K ac-
7 tion for money damages in which—

8 (A) the defendant is not the manufacturer,
9 seller, or distributor of a product, or the provider
10 of a service, that suffers or causes the Y2K fail-
11 ure at issue,

12 (B) the plaintiff is not in substantial priv-
13 ity with the defendant, and

14 (C) the defendant's actual or constructive
15 awareness of an actual or potential Y2K failure
16 is an element of the claim under applicable law,
17 the defendant shall not be liable unless the plaintiff,
18 in addition to establishing all other requisite elements
19 of the claim, proves, by the standard of evidence
20 under applicable State law in effect on the day before
21 January 1, 1999, that the defendant actually knew,
22 or recklessly disregarded a known and substantial
23 risk, that such failure would occur.

24 (2) SUBSTANTIAL PRIVACY.—For purposes of
25 paragraph (1)(B), a plaintiff and a defendant are in

1 substantial privity when, in a Y2K action arising out
2 of the performance of professional services, the plain-
3 tiff and the defendant either have contractual rela-
4 tions with one another or the plaintiff is a person
5 who, prior to the defendant's performance of such
6 services, was specifically identified to and acknowl-
7 edged by the defendant as a person for whose special
8 benefit the services were being performed.

9 (3) CERTAIN CLAIMS EXCLUDED—For purposes
10 of paragraph (1)(C), claims in which the defendant's
11 actual or constructive awareness of an actual or po-
12 tential Y2K failure is an element of the claim under
13 applicable law do not include claims for negligence
14 but do include claims such as fraud, constructive
15 fraud, breach of fiduciary duty, negligent misrepre-
16 sentation, and interference with contract or economic
17 advantage.

18 (c) CONTROL NOT DETERMINATIVE OF LIABILITY.—
19 The fact that a Y2K failure occurred in an entity, facility,
20 system, product, or component that was sold, leased, rented,
21 or otherwise within the control of the party against whom
22 a claim is asserted in a Y2K action shall not constitute
23 the sole basis for recovery of damages in that action. A
24 claim in a Y2K action for breach or repudiation of contract
25 for such a failure is governed by the terms of the contract.

1 (d) PROTECTIONS OF THE YEAR 2000 INFORMATION
2 AND READINESS DISCLOSURE ACT APPLY.—The protec-
3 tions for the exchanges of information provided by section
4 4 of the Year 2000 Information and Readiness Disclosure
5 Act (Public Law 105±271) shall apply to any Y2K action.

6 SEC. 14. APPOINTMENT OF SPECIAL MASTERS OR MAG-
7 ISTRATE JUDGES FOR Y2K ACTIONS.

8 Any district court of the United States in which a Y2K
9 action is pending may appoint a special master or a mag-
10 istrate judge to hear the matter and to make findings of
11 fact and conclusions of law in accordance with Rule 53 of
12 the Federal Rules of Civil Procedure.

13 SEC. 15. Y2K ACTIONS AS CLASS ACTIONS.

14 (a) MATERIAL DEFECT REQUIREMENT.—A Y2K ac-
15 tion involving a claim that a product or service is defective
16 may be maintained as a class action in Federal or State
17 court as to that claim only if—

18 (1) it satisfies all other prerequisites established
19 by applicable Federal or State law, including appli-
20 cable rules of civil procedure; and

21 (2) the court finds that the defect in a product
22 or service as alleged would be a material defect for the
23 majority of the members of the class.

24 (b) NOTIFICATION.—In any Y2K action that is main-
25 tained as a class action, the court, in addition to any other

1 notice required by applicable Federal or State law, shall
2 direct notice of the action to each member of the class, which
3 shall include—

4 (1) a concise and clear description of the nature
5 of the action;

6 (2) the jurisdiction where the case is pending;
7 and

8 (3) the fee arrangements with class counsel, in-
9 cluding the hourly fee being charged, or, if it is a con-
10 tingency fee, the percentage of the final award which
11 will be paid, including an estimate of the total
12 amount that would be paid if the requested damages
13 were to be granted.

14 (c) ~~FORUM FOR Y2K CLASS ACTIONS—~~

15 (1) ~~JURISDICTION—~~Except as provided in para-
16 graph (2), the district courts of the United States
17 shall have original jurisdiction of any Y2K action
18 that is brought as a class action.

19 (2) ~~EXCEPTIONS—~~The district courts of the
20 United States shall not have original jurisdiction over
21 a Y2K action brought as a class action if—

22 (A)(i) a substantial majority of the mem-
23 bers of the proposed plaintiff class are citizens of
24 a single State;

1 (ii) the primary defendants are citizens of
2 that State; and

3 (iii) the claims asserted will be governed
4 primarily by the laws of that State;

5 (B) the primary defendants are States,
6 State officials, or other governmental entities
7 against whom the district courts of the United
8 States may be foreclosed from ordering relief;

9 (C) the plaintiff class does not seek an
10 award of punitive damages, and the amount in
11 controversy is less than the sum of \$10,000,000
12 (exclusive of interest and costs), computed on the
13 basis of all claims to be determined in the action;
14 or

15 (D) there are less than 100 members of the
16 proposed plaintiff class.

17 A party urging that any exception described in sub-
18 paragraph (A), (B), (C), or (D) applies to an action
19 shall bear the full burden of demonstrating the appli-
20 cability of the exception.

21 (3) ~~PROCEDURE IF REQUIREMENTS NOT MET.~~—

22 (A) ~~DISMISSAL OR REMAND~~—A United
23 States district court shall dismiss, or, if after re-
24 moval, strike the class allegations and remand,

1 any Y2K action brought or removed under this
2 subsection as a class action if—

3 (i) the action is subject to the jurisdic-
4 tion of the court solely under this sub-
5 section; and

6 (ii) the court determines the action
7 may not proceed as a class action based on
8 a failure to satisfy the conditions of Rule 23
9 of the Federal Rules of Civil Procedure.

10 (B) A MENDMENT REMOVAL—Nothing in
11 paragraph (A) shall prohibit plaintiffs from fil-
12 ing an amended class action in Federal or State
13 court. A defendant shall have the right to remove
14 such an amended class action to a United States
15 district court under this subsection.

16 (C) PERIOD OF LIMITATIONS TOLLED.—
17 Upon dismissal or remand, the period of limita-
18 tions for any claim that was asserted in an ac-
19 tion on behalf of any named or unnamed mem-
20 ber of any proposed class shall be deemed tolled
21 to the full extent provided under Federal law.

22 (D) DISMISSAL WITHOUT PREJUDICE—The
23 dismissal of a Y2K action under subparagraph
24 (A) shall be without prejudice.

1 (d) EFFECT ON RULES OF CIVIL PROCEDURE—Ex-

2 cept as otherwise provided in this section, nothing in this
3 section supersedes any rule of Federal or State civil proce-
4 dure applicable to class actions.

5 SEC. 16. APPLICABILITY OF STATE LAW.

6 Nothing in this Act shall be construed to affect the ap-
7 plicability of any State law that provides stricter limits
8 on damages and liabilities, affording greater protection to
9 defendants in Y2K actions, than are provided in this Act.

10 SEC. 17. ADMISSIBLE EVIDENCE ULTIMATE ISSUE IN STATE
11 COURTS.

12 Any party to a Y2K action in a State court in a State
13 that has not adopted a rule of evidence substantially similar
14 to Rule 704 of the Federal Rules of Evidence may introduce
15 in such action evidence that would be admissible if Rule
16 704 applied in that jurisdiction.

17 SEC. 18. SUSPENSION OF PENALTIES FOR CERTAIN YEAR

18 2000 FAILURES BY SMALL BUSINESS CON-
19 CERNS.

20 (a) DEFINITIONS.—In this section—

21 (1) the term ``agency" means any executive agen-
22 cy, as defined in section 105 of title 5, United States
23 Code, that has the authority to impose civil penalties
24 on small business concerns;

1 (2) the term ``first-time violation" means a vio-
2 lation by a small business concern of a federally en-
3 forceable rule or regulation (other than a Federal rule
4 or regulation that relates to the safety and soundness
5 of the banking or monetary system or for the integrity
6 of the National Securities markets, including protec-
7 tion of depositors and investors) caused by a Y2K
8 failure if that Federal rule or regulation had not been
9 violated by that small business concern within the
10 preceding 3 years; and

11 (3) the term ``small business concern" has the
12 same meaning as a defendant described in section
13 5(b)(2)(B).

14 (b) ESTABLISHMENT OF LIAISONS—Not later than 30
15 days after the date of enactment of this Act, each agency
16 shall—

17 (1) establish a point of contact within the agency
18 to act as a liaison between the agency and small busi-
19 ness concerns with respect to problems arising out of
20 Y2K failures and compliance with Federal rules or
21 regulations; and

22 (2) publish the name and phone number of the
23 point of contact for the agency in the Federal Reg-
24 ister.

1 (c) ~~GENERAL RULE.~~—Subject to subsections (d) and
2 (e), no agency shall impose any civil money penalty on a
3 small business concern for a first-time violation.

4 (d) ~~STANDARDS FOR WAIVER.~~—An agency shall pro-
5 vide a waiver of civil money penalties for a first-time viola-
6 tion, provided that a small business concern demonstrates,
7 and the agency determines, that—

8 (1) the small business concern previously made a
9 reasonable good faith effort to anticipate, prevent, and
10 effectively remediate a potential Y2K failure;

11 (2) a first-time violation occurred as a result of
12 the Y2K failure of the small business concern or other
13 entity, which significantly affected the small business
14 concern's ability to comply with a Federal rule or
15 regulation;

16 (3) the first-time violation was unavoidable in
17 the face of a Y2K failure or occurred as a result of
18 efforts to prevent the disruption of critical functions
19 or services that could result in harm to life or prop-
20 erty;

21 (4) upon identification of a first-time violation,
22 the small business concern initiated reasonable and
23 prompt measures to correct the violation; and

24 (5) the small business concern submitted notice
25 to the appropriate agency of the first-time violation

1 within a reasonable time not to exceed 5 business
2 days from the time that the small business concern be-
3 came aware that the first-time violation had occurred.
4 (e) EXCEPTIONS—An agency may impose civil money
5 penalties authorized under Federal law on a small business
6 concern for a first-time violation if—
7 (1) the small business concern's failure to comply
8 with Federal rules or regulations resulted in actual
9 harm, or constitutes or creates an imminent threat to
10 public health, safety, or the environment; or
11 (2) the small business concern fails to correct the
12 violation not later than 1 month after initial notifi-
13 cation to the agency.
14 (f) EXPIRATION—This section shall not apply to first-
15 time violations caused by a Y2K failure occurring after De-
16 cember 31, 2000.